

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JUAN C. CRUZ-RODRIGUEZ,
Petitioner

v.

NICANOR CARO-DELGADO, et al.,
Respondents.

Civil No. 07-1769 (ADC)

ORDER

In the case at bar, the Puerto Rico Department of Justice was ordered to respond to petitioner's § 2254 claim on February 20, 2008 (**Docket No. 17**). On April 15, 2008, respondents filed a Motion on Compliance (**Docket. No. 18**) in which it failed to submit evidence of petitioner's Rule 192.1 motion before the state trial court and any other relevant evidence that could assist this Court in disposing of petitioner's claims. While stating to be in need of additional time to review its closed files within the custody of the General Archives of the Department of Justice, to date, there is no indication of whether they have actually been able to locate petitioner's records or any missing post-conviction and/or state court rulings regarding petitioner's state criminal case before the Ponce Part, Puerto Rico Court of First Instance. (**Docket No. 18**)

Thereafter, on April 22, 2008, Magistrate-Judge Camille Vélez-Rivé issued a Report and Recommendation in which respondents failure to submit evidence from state records, in spite of a previous court order, was once again, highlighted. Inasmuch as the Puerto Rico

Department of Justice was unable to substantiate the allegations within its motion to dismiss Cruz-Rodríguez's petition, the Magistrate-Judge recommends dismissal of respondents' motion to dismiss (**Docket No. 21**). Respondents failed to object to said Report and Recommendation within the prescribed ten (10) days. Actually, as of this date, it remains unopposed. The Magistrate-Judge's Report and Recommendation is being adopted.

Accordingly, in order to properly consider petitioners' § 2254 claim, it is ordered as follows:

- a) The Federal Public Defender is appointed to represent petitioner Cruz-Rodríguez.
- b) The Federal Public Defender, through its investigator will assess the contents of petitioner's Rule 192.1 motion (if obtained, copy is to be submitted) and provide any relevant documentation to the Court.
- c) The Clerk of Court, will serve, by certified mail, copy of petitioners' § 2254 claim and this Order upon trial counsel: Angel Albizu-Merced, Puerto Rico Bar No. 6921, at Calle H, Díaz-Navarro #24 Alt., Guaynabo, Puerto Rico 00669 (Tel. (787) 720-2059).
- d) Attorney Albizu-Merced is granted twenty (20) calendar days, to respond to petitioner's claim. Specifically, a response to whether petitioner had requested to appeal his judgment, and if so, whether or not such appeal was pursued and why. Counsel may

submit any other evidence that may enable this Court to properly dispose of the issues at hand.¹

e) Petitioner Cruz-Rodríguez shall submit, within the next twenty (20) calendar days, copy of his Rule 192.1 motion submitted before the Ponce Court. Petitioner is to corroborate or clarify whether it was on June 27, 1995 when he first asked trial counsel to appeal the judgment in his state case. In view of this Order, petitioner's request at **Docket No. 22** is **MOOT**.

Petitioner is placed on notice that failure to timely comply may and will lead to consideration of his § 2254 claim with the evidence now on record.

SO ORDERED.

At San Juan, Puerto Rico, this 2nd day of June, 2008.

S/AIDA M. DELGADO-COLON
United States District Judge

¹ Counsel shall bear in mind that petitioner claims that during trial and /or at the time of sentence he was under the effects of medication (sedatives) administered to him at the Caguas Regional Hospital on December 14, 1992.